

46 Am. Jur. 2d Judges § 162

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

c. Prior Participation in or Connection with Case as Attorney as Grounds for Disqualification

§ 162. Judge's former role as prosecutor as grounds for disqualification—Prosecution in other criminal proceedings

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West's Key Number Digest

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[Prior Representation or Activity as Prosecuting Attorney as Disqualifying Judge from Sitting or Acting in Criminal Case](#),
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Judges are not disqualified from sitting or acting in criminal cases on the ground that they have previously prosecuted defendants in unrelated criminal proceedings.¹ There is no per se rule that a judge who has formerly prosecuted a defendant must disqualify him- or herself from presiding over a trial on unrelated charges against that defendant absent some showing of prejudgment or bias.² Disqualification is not required in every instance in which a presiding judge, as a former prosecutor, brought unrelated criminal charges against the defendant in the past; absent facts demonstrating some material relationship between the two proceedings, or facts showing that the past prosecution is relevant to the current case, disqualification is not invariably required.³

A judge who was a prosecutor is not disqualified from hearing a case involving a repeat offender, who may be subject to enhanced punishment, even though the judge prosecuted the defendant in the prior felony cases.⁴ However, there is authority that judges are disqualified from sitting or acting in criminal cases on the ground that they previously prosecuted the defendants

in unrelated criminal proceedings that are being adduced to prove the defendants' status as habitual criminals or to enhance sentencing.⁵

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Footnotes

- 1 U.S. v. Bauer, 19 F.3d 409 (8th Cir. 1994); Beshears v. State, 329 Ark. 469, 947 S.W.2d 789 (1997); State v. Bunker, 89 Conn. App. 605, 874 A.2d 301 (2005); Leverette v. State, 291 Ga. 834, 732 S.E.2d 255 (2012); West v. State, 131 So. 3d 583 (Miss. Ct. App. 2013); Engles v. State, 2015 OK CR 17, 366 P.3d 311, 327 Ed. Law Rep. 502 (Okla. Crim. App. 2015); Mumphrey v. State, 509 S.W.3d 565 (Tex. App. Texarkana 2016), petition for discretionary review refused (Apr. 26, 2017).
- 2 Com. v. O'Shea, 523 Pa. 384, 567 A.2d 1023 (1989); Nevarez v. State, 832 S.W.2d 82 (Tex. App. Waco 1992), petition for discretionary review refused, (Nov. 25, 1992); State v. Neeley, 748 P.2d 1091 (Utah 1988). As to bias or prejudice as a disqualifying factor, generally, see §§ 123 to 144.
- 3 People v. Flockhart, 2013 CO 42, 304 P.3d 227 (Colo. 2013).
- 4 Jordon v. State, 274 Ark. 572, 626 S.W.2d 947 (1982); State v. Zamora, 129 Idaho 817, 933 P.2d 106 (1997); Dishman v. State, 525 N.E.2d 284 (Ind. 1988); Com. v. Carter, 701 S.W.2d 409 (Ky. 1985); People v. Potter, 115 Mich. App. 125, 320 N.W.2d 313 (1982); People v. Jones, 143 A.D.2d 465, 532 N.Y.S.2d 586 (3d Dep't 1988); Smith v. State, 357 S.W.3d 322 (Tenn. 2011).
- 5 Crawford v. State, 686 So. 2d 199 (Ala. Crim. App. 1996); Sincavage v. Superior Court, 42 Cal. App. 4th 224, 49 Cal. Rptr. 2d 615 (1st Dist. 1996); Goines v. State, 708 So. 2d 656 (Fla. 4th DCA 1998).

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